

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>10/26/2012</u>
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**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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IDEAL STEEL SUPPLY CORP.,

Plaintiff,

-against-

JOSEPH ANZA, VINCENT ANZA, and  
NATIONAL STEEL SUPPLY, INC.,

Defendants.  
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02 Civ. 4788 (RMB) (AJP)

**OPINION & ORDER**

**I. Background**

Before the Court is the Report and Recommendation of United States Magistrate Judge Andrew J. Peck, issued from the bench on August 10, 2012 ("Report"), recommending that the Court deny Plaintiff's motion for prejudgment attachment, filed on June 13, 2012. (See Hr'g Tr., dated Aug. 10, 2012, at 15–16.) Judge Peck determined that (1) attachment was inappropriate because Defendant National Steel Supply, Inc. ("National Steel") "has no assets," and the Court cannot attach the assets of non-party Omni Steel Supply LLC ("Omni Steel"); and (2) an accounting of Defendants' assets and the posting of a \$5 million bond were inappropriate because Plaintiff conceded that it had "absolutely no case law support" for such relief. (Report at 4, 12, 15–16.) No objections to the Report were filed.

**For the reasons set forth below, the Court adopts the Report in its entirety and denies Plaintiff's motion for prejudgment attachment.**

**II. Legal Standard**

The Court may adopt those portions of a magistrate judge's report to which no objections have been made and which are not clearly erroneous. See Fed. R. Civ. P. 72(a); Pizarro v. Bartlett, 776 F. Supp. 815, 817 (S.D.N.Y. 1991). The Court may accept, reject, or modify, in

whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. § 636(b)(1).

### **III. Analysis**

Having conducted a review of the Report, the Court finds that the Report is not clearly erroneous and, in fact, is supported by applicable legal authorities. See Pizarro, 776 F. Supp. at 817. The facts set forth in the Report are incorporated herein by reference unless otherwise noted.

Judge Peck concluded that National Steel is “out of business” and “has no assets.” (Report at 2–4.) Judge Peck also concluded that the Court cannot attach the assets of non-party Omni Steel because “as [Plaintiff’s counsel] conceded, Omni is not before the Court, and that’s why the Court cannot give any relief with respect to Omni.” (Report at 16); see Nykcool A.B. v. Pac. Fruit Inc., No. 10 Civ. 3867, 2012 WL 1255019, at \*6–8 (S.D.N.Y. Apr. 16, 2012). And, Judge Peck found that Defendants have “amicably resolved” to give Plaintiff 15-days notice before “any sale or encumbrance” of certain real property located at 14564 Liberty Avenue, Jamaica, NY and/or of the home of Defendant Joseph Anza. (Report at 10–12, 15.)

Judge Peck also concluded that Plaintiff conceded “there is absolutely no case law support” for an accounting or the posting of a bond. (Report at 16; see id. at 6 (THE COURT: “Give me a case that says on an attachment motion like this, you have the right to an asset accounting.” PL. COUNSEL: “I don’t have a case I can concede, your Honor.”); id. at 6–7 (THE COURT: “Give me a case for the bond.” PL. COUNSEL: “I concede I don’t have one at my fingertips.”).)

**IV. Conclusion & Order**

For the reasons stated herein and therein, the Report [#159] is adopted in its entirety and Plaintiff's motion for prejudgment attachment [#142] is denied.

A final pre-trial/settlement conference is scheduled for December 3, 2012 at 9:00 a.m. The parties are directed to engage in good faith settlement discussions prior to the conference.

Dated: New York, New York  
October 26, 2012

  
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RICHARD M. BERMAN, U.S.D.J.